D.B. CIVIL WRIT PETITION NO.4385/1997
(Narendra Raj Mehta Vs. UOI & Ors.)

Date of order : 13.9.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Anjay Kothari, for the petitioner.
Mr. Sangeet Lodha, for the respondents.

Heard learned counsel for the parties.

The petitioner has filed this writ petition against the notice issued under Section 158 BD of the Income Tax Act. He has raised multiple grounds in the writ petition including the question as to the jurisdiction of the assessing officer to issue notice itself. Incidentally, the challenge to validity of Section 158 BD of IT Act has been raised in case other grounds on merit fail.

At this juncture when the challenge to the vires of Section 158 BD of IT act is incidental or preliminary and the assessee – petitioner has come only against the notice, we consider the writ petition to be pre-mature as petitioner is free to raise all objection including the question of assumption of jurisdiction by the assessing officer to issue notice under Section 158 BD of the IT Act by contending the condition precedent required for assumption for

jurisdiction has not been shown to exist in this case. The orders passed by the assessing authority being subject to the remedial measures, the petitioner may pursue his remedy before the statutory authority.

In these circumstances, learned counsel for the petitioner seeks permission to withdraw this petition with liberty to raise all objections before the assessing authority and if necessary to raise the question of vires at appropriate stage. In case, the objection as to the jurisdiction is raised by the assesssee before the assessing authority, the same may be decided as preliminary issue.

The petition is dismissed as withdrawn with the liberty as prayed for.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

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